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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/884,829	06/19/2001	Karel Van den Berg	8553/221	2485

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EXAMINER

MACARTHUR, VICTOR L

ART UNIT

PAPER NUMBER

3679

DATE MAILED: 08/27/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.	Applicant(s)	
09/884,829	VAN DEN BERG, KAREL	
Examiner	Art Unit	
Victor MacArthur	3679	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 07 August 2002.

2a) This action is FINAL. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 1 and 28-54 is/are pending in the application.

4a) Of the above claim(s) 31-34, 38, 40, 45, 49 and 50 is/are withdrawn from consideration.

5) Claim(s) _____ is/are allowed.

6) Claim(s) 1, 28-30, 35-37, 39, 41-44, 46-48, 51- 54, is/are rejected.

7) Claim(s) _____ is/are objected to.

8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11) The proposed drawing correction filed on _____ is: a) approved b) disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12) The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some * c) None of:

1. Certified copies of the priority documents have been received.

2. Certified copies of the priority documents have been received in Application No. _____.

3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) The translation of the foreign language provisional application has been received.

15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) Notice of References Cited (PTO-892)

2) Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) Information Disclosure Statement(s) (PTO-1449) Paper No(s) 4.

4) Interview Summary (PTO-413) Paper No(s). _____.

5) Notice of Informal Patent Application (PTO-152)

6) Other: _____.

DETAILED ACTION

Response to Election

Applicant's election with traverse of species I and claims 1, 28-30, 32-37, 39, 41-44, 46-48 and 51-54 in Paper No. 7 is acknowledged. The traversal is on the ground(s) that all of the species "involve the demarcation of a pasture or the like in which animals are confined and wherein the area which is confined can be readily adjusted by the apparatus of the invention" and that "the word species should not be considered necessarily synonymous with embodiments" and that "claims, as such, are not species, as such, or even variations of the same invention, as such". This is not found persuasive since the fact that multiple species have one or more limitations in common is not, in and of itself, sufficient evidence that the species are obvious variants of each other. Species are necessarily closely related, however this fact is irrelevant to the question of whether or not restriction is proper. What is relevant is whether or not the species are patentably distinct. See MPEP § 808.016. The examiner agrees that the word "species" is not necessarily synonymous with the word "embodiment". However, in this case there exist limitations not common among species. For instance, the motor and drum of figures 1-3 is not present in figures 4-7 and the double angle measuring devises of figures 4-7 are not present in figures 1-3 (only one angle measuring devise is present). Nor, is stationary reference point (18) shown in figures 1-3. The applicant has failed to provide evidence that the species are obvious variants or to admit on the record that this is the case. Accordingly, the requirement is still deemed proper and is therefore made FINAL.

Claims 31, 38, 40, 45, and 49-50 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected Species, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in Paper No. 7.

Elected claims 32 and 33 depend from and contain all of the limitations of nonelected claim 31, which does not read on elected Species I. Therefore, claims 32 and 33 do not read on Species I and are withdrawn from further consideration.

Elected claim 34 contains the limitation “stationary reference point” which appears to be drawn to species II (figs. 4-7) and is not supported by species I (figs. 1-3) since no “stationary reference point” is present in figs. 1-3. Therefore, claim 34 does not read on elected species I and is withdrawn from further consideration.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 28-30, 35-37, 39, 42-44, 46-48, 51 and 53 are rejected under 35 U.S.C. 102(b) as being anticipated by DE 4215714 to Schulte.

Regarding claim 1, Schulte discloses (figs.1-8) an implement for demarcating an area, in particular for restricting the freedom of movement of animals walking about freely, characterized in that the implement is provided with a demarcation element (35) and at least one vehicle (5) connected thereto, the vehicle is suitable for adjustably positioning an end of at least a section (portion 35 between both vehicles mentioned in abstract) of the demarcation element (35).

As to claim 28, Schulte discloses (figs.1-8) an apparatus for demarcating an area, which comprises a demarcation element (35), which includes at least one section, and a vehicle (5) connected to an end of the section, the vehicle including positioning means (12) for adjustably positioning the end of the section of the demarcation element.

As to claim 29, Schulte discloses (figs.1-8) an apparatus in accordance with claim 28 wherein the demarcation element is flexible so that it can be wound and rewound.

As to claim 30, Schulte discloses (figs.1-8) an apparatus in accordance with claim 29 wherein the demarcation element includes tightening means (42, 17, 18, 12) for tightening the demarcation element (35).

As to claim 35, Schulte discloses (figs.1-8) an apparatus in accordance with claim 28 wherein the section is adjustable in length (fig.7), the apparatus further comprising winding means (42) for winding and unwinding the adjustable section.

As to claim 36, Schulte discloses (figs.1-8) an apparatus in accordance with claim 35 wherein the winding means (42) is fitted to the vehicle.

As to claim 37, Schulte discloses (figs.1-8) an apparatus in accordance with claim 35, which further comprises a reference point (second tracked vehicle mentioned in abstract), which is connected to another end of the section (35), the winding means (42) being disposed at the reference point.

As to claim 39, Schulte discloses (figs.1-8) an apparatus in accordance with claim 28, which comprises angle-measuring means (within the broadest reasonable interpretation of the claim 36 and 34 could be used to measure an angle in 35) associated with the demarcation element (35) for determining the angle between a predetermined direction and the section.

As to claim 42, Schulte discloses (figs.1-8) an apparatus in accordance with claim 28 wherein the vehicle is an unmanned vehicle.

As to claim 43, Schulte discloses (figs.1-8) an apparatus in accordance with claim 28 wherein the vehicle comprises ground engaging (via track 10) rotatable members (12) that support the vehicle, the ground engaging rotatable members consisting of essentially two members.

As to claim 44, Schulte discloses (figs.1-8) an apparatus in accordance with claim 43 wherein the ground engaging rotatable members (12) are connected to drive means (17, 18) so that they are independently drivable relative to each other.

As to claim 46, Schulte discloses (figs.1-8) an apparatus in accordance with claim 28 wherein the demarcation element is flexible, tightening means (42, 17, 18, 12) being provided for the demarcation element (35), the tightening means comprising a motor (17, 18).

As to claim 47, Schulte discloses (figs.1-8) an apparatus in accordance with claim 28 which further comprises a positioning system (12, 10, 17, 18).

As to claim 48, Schulte discloses (figs.1-8) an apparatus in accordance with claim 28, which comprises a further vehicle (as mentioned in the abstract) and distance determining means (6) for determining the distance between the first mentioned vehicle and the further vehicle.

As to claim 51, Schulte discloses (figs.1-8) an apparatus in accordance with claim 28 wherein the demarcation element comprises a double conductor (6, 35).

As to claim 53, Schulte discloses (figs.1-8) an apparatus in accordance with claim 28 wherein the demarcation element (35) comprises a second section (section of 35 in contact with winders 42), an end of the second section being connected to the vehicle, each section being

provided with winding means (42 on both vehicles) which are capable of being controlled independently of each other.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 41 and 54 are rejected under 35 U.S.C. 103(a) as being unpatentable over DE 4215714 to Schulte in view of FR 2488103.

Regarding claim 41 and 54, Schulte discloses (figs.1-8) an apparatus for demarcating an area which comprises a demarcation element (35) that includes a plurality of flexible sections (sections in contact with winders 42 and center section between the two vehicles), a plurality of vehicles (two disclosed in the abstract), each of the vehicles being connected to at least one end of at least one of the sections (center section 35), each vehicle including positioning means (10, 12) and tightening means (42, 10, 12) adjustably positioning at least one end of one of the sections and tightening a section which extends between the vehicles, the vehicles each being supported by two wheels which are independently controllable by battery powered electric motors (17, 18) carried on the vehicles. Schulte does not disclose solar panels for providing electrical power to the motors. FR 2488103 teaches (figs.1-4) that solar panels and batteries are equivalent power sources for fences that require electricity. Therefore, it would have been obvious to one with ordinary skill in the art at the time the invention was made to modify the

apparatus of Schulte to use solar panels rather than batteries, as they are known equivalents in the art.

Claim 52 is rejected under 35 U.S.C. 103(a) as being unpatentable over DE 4215714 to Schulte in view of USPN 3987912 to Leon Moyano.

Regarding claim 52, Schulte discloses (figs.1-8) an apparatus for demarcating an area in accordance with claim 28 comprising a vehicle device. Schulte does not disclose a computer. Leon Moyano teaches an apparatus for demarcating an area comprising a computer for the purpose of remotely controlling mechanisms and devises (col.4, ll.45-51). Therefore, it would have been obvious to one with ordinary skill in the art at the time the invention was made to modify the vehicle device of Schulte to include a computer as taught by Leon Moyano for the purpose of remotely controlling the devise (col.4 ll.45-51).

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Referring to apparatus for demarcating an area:

USPN 5572954 to Elkins;

USPN 4721061 to McNatt;

USPN 3302616 to Bradshaw;

USPN 6067940 to Holder;

USPN 2987299 to Kneen;

USPN 3972307 to Marseillan; and

USPN 4048959 to Steele.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Victor MacArthur whose telephone number is (703) 305-5701. The examiner can normally be reached on 8:30am - 5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lynne Browne can be reached on (703) 308-1159. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9326 for regular communications and (703) 872-9327 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1113.

NZM
VLM
August 22, 2002


Lynne H. Browne
Supervisory Patent Examiner
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